

BOARD OF APPEALS CASE NO. 5539

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BEFORE THE

APPLICANTS: 3105 Abingdon Road LLC

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ZONING HEARING EXAMINER

REQUEST: Variance to allow 2 panhandle lots
as part of a 4-lot subdivision in the R2 District

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OF HARFORD COUNTY

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HEARING DATE: June 14, 2006

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ZONING HEARING EXAMINER'S DECISION

The Applicant, 3105 Abingdon Road LLC, is seeking a variance, pursuant to Section 267-22G(1) of the Harford County Code, to allow two panhandle lots as part of a four lot subdivision in the R2 District.

The subject property is located at 3105 Abingdon Road , Abingdon, Maryland 21009 in the First Election District, and is more particularly identified on Tax Map 61, Grid 1F, Parcels 36 and 37. The parcels are zoned R2/Urban Residential District, and contain approximately 1.73 acres combined.

Mr. Ronald Benfield appeared and testified that he is the owner of the Applicant LLC, which is requesting a variance to allow two panhandle lots on the subject property. According to the witness, the property contains two distinct parcels, both of which are unique. Parcel 36 is unusually narrow and deep, with limited road frontage. That parcel cannot be developed under present day zoning standards and still allow for adequate road frontage and driveway size. In addition, any structure constructed on the site meeting present day setback requirements would be extremely long and narrow and would, therefore, not be in keeping with the existing neighborhood. Parcel 37 although wider, is sharply trapezoidal in shape. The unusual angle of that parcel would also create difficulty complying with current building setbacks.

Case No. 5539 – 3105 Abingdon Road LLC

Mr. Benfield testified that as a result of the aforesaid practical difficulties, he is requesting a variance to combine the two parcels into one four lot subdivision, containing two standard road frontage lots, and two rear panhandle lots. This would also allow for the construction of one common drive servicing all four lots, eliminating the necessity for three separate access points onto Abingdon Road. In order to further reduce impact on Abingdon Road, the Applicant testified that each of the four homes on the subject parcel would have side entrance garages. That would insure that all vehicles entering Abingdon Road would enter head on, as opposed to backing out onto the roadway. This would create an added element of safety at the access point, as well as enhancing traffic and pedestrian safety along Abingdon Road.

Mr. Steve Nolan, President of CNA, a civil engineering, land surveying, landscape architect and geotechnical engineering firm located in Forest Hill Maryland, appeared and testified on behalf of the Applicant. Mr. Nolan stated that based on the existing R2 zoning, the Applicant would be entitled as a matter of right, to construct three homes accessible by way of three to four separate driveways onto Abingdon Road on the subject parcels. Instead, the Applicant wishes to develop the property in a way which would maintain appropriate lot sizes, and limit access onto Abingdon Road to one central common driveway. He, therefore, proposes to develop two lots with road frontage on Abingdon Road, and two rear panhandle lots. If the requested variance is granted, all four lots will be accessed via a common drive, and all four property owners will be required to sign a common drive agreement. Development in this manner would require a variance to consolidate the two existing parcels into one lot, and allowing two panhandle lots on the consolidated parcel.

The witness described Applicants Exhibit 1, and identified it as a sample design plan which Applicant would be permitted to utilize without the necessity of obtaining a variance. He indicated that this plan would be less desirable from a traffic safety standpoint, than the proposed plan, because it would require three to four separate entrances onto Abingdon Road.

Case No. 5539 – 3105 Abingdon Road LLC

Mr. Nolan then referred to Applicant's Exhibit 2, which he identified as the design plan Applicant proposes to use if the requested variance is granted. On that plan, Parcels 36 and 37 have been combined into one site, allowing the Applicant to develop the property as one four lot subdivision, with two standard road frontage lots and two rear panhandle lots. That plan also depicts the one common drive which is proposed to service all four lots, by providing egress and egress to Abingdon Road. Finally, Mr. Nolan stated that in his opinion, the granting of the requested variance would not result to any adverse impact on any adjoining properties.

Mr. Anthony McClune appeared on behalf of the Department of Planning and Zoning, and testified regarding the findings of fact and the recommendations made by that agency. He verified that the Department recommended approval of the subject request in its May 18, 2006 Staff Report, subject to three conditions set forth in that report.

Mr. McClune testified that the Department found the subject property unique because both of the subject parcels are exceptionally long narrow lots, particularly Lot 36. Although it is theoretically possible for the Applicant to reconfigure the two parcels to create a four lot subdivision, (see Staff Report Attachment 4) the resulting lots would be severely restricted with regard to buildable areas and envelopes. That configuration would also require three to four separate access points from the subject property onto Abingdon Road..

According to Mr. McClune, development of the property in the proposed panhandle lot configuration would be preferable from a traffic safety standpoint. The witness testified that Abingdon Road is a well traveled collector road, and that the Department would encourage reduction of access points onto that roadway wherever possible. The requested variance would comply with this departmental objective.

The witness also emphasized that the Applicants need to combine the parcel into one development site, with one shared access point, in order for two panhandle lots to be allowed on the subject property. If the property is viewed as two separate parcels, only one panhandle lot would be allowed.

Case No. 5539 – 3105 Abingdon Road LLC

Finally, Mr. McClune testified that the granting of the requested variance would have no adverse impact on adjoining properties. Rather, it would enhance traffic safety, and comply with the intent of the Code by reducing the number of multiple access points onto Abingdon Road

No witnesses appeared in opposition to the requested variance.

CONCLUSION:

The Applicants are seeking a variance pursuant to Section 267-22G(1) of the Harford County Code, to allow four (4) panhandle lots (one [1] permitted) in an R2 District.

Section 267-22G provides:

A Panhandle-lot requirements. Panhandle lots shall be permitted for agricultural and residential uses, to achieve better use of irregularly shaped parcels, to avoid development in areas with environmentally sensitive features or to minimize access to collector or arterial roads, subject to the following requirements:

- (1) Except in Agricultural and Rural Residential Districts, with regard to any parcel, as it existed on September 1, 1982, not more than one (1) lot or five percent (5%) of the lots intended for detached dwellings, whichever is greater, and not more than ten percent (10%) of the lots intended for attached dwellings may be panhandle lots.
- (2) Panhandles shall be a maximum of seven hundred (700) feet in length. The Zoning Administrator may grant a waiver of the maximum length where the topography, natural features or geometry of the parcel make a longer panhandle necessary.
- (3) A common drive shall be constructed to serve any group of two (2) or more panhandle lots. Driveways for all panhandle lots shall access from the common drive.
- (4) Groups not exceeding four (4) lots may have two (2) lots on panhandles in accordance with the following criteria. Panhandle lots and subdivisions shall have, as a minimum, the following width:
 - (a) Single panhandles: twenty-five (25) feet.
 - (b) Double panhandles: twelve and one-half (122) feet each, for a total of twenty-five (25) feet.

Case No. 5539 – 3105 Abingdon Road LLC

- (5) Where a common drive is required, the following shall apply:
 - (a) Prior to or at the time of recordation of a panhandle subdivision, the owner shall also record subdivision restrictions that shall provide for the construction, type, responsibility for the same, including all costs, and use and maintenance of the common drive, which shall be applicable to all lots subject to the common-drive plan. The subdivision restrictions shall be reviewed and approved by the Department of Law prior to recordation to ensure that all lots subject to the common-drive plan will be subject to the restrictions upon recordation thereof for inclusion in the deeds of conveyance.
 - (b) The Department of Planning and Zoning, with the advice of the Law Department, shall establish rules and regulations for the drafting of common-drive agreements.
 - (c) The county shall bear no responsibility for the installation or maintenance of the common drive.”

Section 267-11 of the Harford County Code permits the granting of variances stating that:

“Variances from the provisions or requirements of this Code may be granted if the Board finds that:

- (1) By reason of the uniqueness of the property or topographical conditions, the literal enforcement of this Code would result in practical difficulty or unreasonable hardship.
- (2) The variance will not be substantially detrimental to adjacent properties or will not materially impair the purpose of this Code or the public interest.”

Case No. 5539 – 3105 Abingdon Road LLC

Under its present R2 zoning, the Applicants are entitled to develop four lots on the subject property, with three to four separate access points onto Abingdon Road. Rather than develop the site in that manner, they are requesting a variance to develop two road frontage lots and two panhandle lots. A variance is required because Section 267-22G(1) of the Harford County Code limits the number of panhandle lots allowed in an R2 District to the greater of one (1) lot, or five percent (5%) of the lots intended for detached dwellings.

The Maryland Court of Special Appeals set forth a two prong test for determining whether a variance should be granted in the case of *Cromwell v. Ward*, 102 Md. App. 691, (1995). This test can be summarized as follows. First, there must be a determination as to whether there is anything unique about the property for which the variance is being requested. A lot is unique if a peculiar characteristic or unusual circumstance relating only to the subject property causes the zoning ordinance to impact more severely on that property than on surrounding properties. *Cromwell, supra*, at 721. If the subject property is found to be unique, the trier of fact must then determine whether literal enforcement of the zoning ordinance with regard to the unique property, would result in practical difficulty or unreasonable hardship to the owner.

The Hearing Examiner finds that the subject properties are unique. Both lots are exceptionally long and narrow. In addition, Lot 37 is sharply trapezoidal in shape. The lot configuration severely limits the building envelop on each parcel.

The Hearing Examiner finds that literal enforcement of the Code would result in practical difficulty for the Applicant. Under existing R2 zoning, the Applicant could construct four (4) residences on the property without the necessity of obtaining a variance. While technically feasible, the development of four lots on the two separate parcels would require construction of three to four separate access drives onto Abingdon Road.

Case No. 5539 – 3105 Abingdon Road LLC

Finally, the Hearing Examiner finds that the granting of the requested variance will neither be substantially detrimental to adjacent properties, nor materially impair the purpose of this Code or the public interest. The proposed variance, allowing two rear panhandle lots on the subject property, will eliminate the need to construct multiple access points onto Abingdon Road within close proximity to each other. Abingdon Road is a heavily traveled minor collector road. Reducing the number of access points, and designing access in such a way as to eliminate the need for residents to back out of their driveways onto that roadway will conform to the purpose and intent of the Code by increasing traffic safety in the vicinity of the subject property.

For the reasons set forth above, the Hearing Examiner recommends approval of the Applicant's request, subject to the following conditions:

1. That the Applicant shall obtain all necessary permits and inspections for the development of the subject property.
2. The Applicant shall submit a detailed preliminary plan for review and approval by the Department of Planning and Zoning.
3. That a final plat be submitted to the Department of Planning and Zoning for approval and recordation in the County Land Records
4. That a common drive shall be utilized by all four (4) lots. The Applicant shall prepare a common drive agreement to be submitted to reviewed and approved with the final plat.

Date: July 20, 2006

REBECCA A BRYANT
Zoning Hearing Examiner

Any appeal of this decision must be received by 5:00 p.m. on AUGUST 17, 2006.